

IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE: INVESTIGATION:

Case No. 2003-00433  
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,  
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND  
ELECTRIC COMPANY

and

Case No. 2003-00434  
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND  
CONDITIONS OF KENTUCKY UTILITIES COMPANY

\* \* \*

SWORN STATEMENT

OF

ROBERT G. ROSENBERG

AUGUST 29, 2005

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9/9/05/2016

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE  
COMMISSION:

JONATHAN D. GOLDBERG  
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3000 National City Tower  
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FOR THE WITNESS:

THOMAS P. O'BRIEN  
(Via Speakerphone)  
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3200 Aegon Center  
400 West Market Street  
Louisville, Kentucky 40202

1  
2 The sworn statement of ROBERT G.  
3 ROSENBERG, taken telephonically in the offices of  
4 Goldberg & Simpson, 3000 National City Tower,  
5 101 South Fifth Street, Louisville, Kentucky, on  
6 Monday, the 29th day of August, 2005, at  
7 approximately 10:00 a.m.

8  
9 EXAMINATION

10  
11 BY MR. GOLDBERG:

12 Q. All right, Mr. Rosenberg, would you  
13 give us your full name.

14 A. Robert G. Rosenberg.

15 Q. And your business address?

16 A. 541 Bear Ladder Road, West Fulton,  
17 New York, 12194.

18 Q. All right. And when you say "Bear  
19 Ladder," how do you spell that?

20 A. Bear, B-E-A-R, L-A-D-D-E-R, Road.

21 Q. All right, sir. And what occupation  
22 are you engaged in?

23 A. Economic consulting.

24 Q. All right. And when you say "economic  
25 consulting," what type of activity do you undertake?

1           A.       I do mostly financial and economic  
2 analyses for regulated companies. In addition, I do  
3 some financial analysis such as damage estimates,  
4 things like that.

5           Q.       Okay. Are you familiar with  
6 Louisville Gas & Electric Company, LLC?

7           A.       Yes.

8           Q.       Okay. And are you familiar with  
9 Kentucky Utilities?

10          A.       Yes, I am.

11          Q.       Okay. Can you tell me when you first  
12 formed a relationship with either and/or both?

13          A.       I've worked for them in several  
14 proceedings. I think the very first time was  
15 probably 20 or 25 years ago, but then I didn't see  
16 them until a few years ago when I started working on  
17 some cases for them.

18          Q.       Okay. And did you work for KU prior  
19 to the time KU was part of the LG&E, LLC, family?

20          A.       That's a good question. As I said,  
21 about 20, 25 years ago I worked on a case. And I  
22 don't remember now -- because I wasn't testifying in  
23 that case, but I don't remember if it was LG&E and  
24 KU, but that's how I formed the contacts with -- just  
25 about four or five years ago they started calling me

1 again.

2 Q. All right. At the time they started  
3 calling you, did you get calls from LG&E, LLC, to  
4 perform work for KU?

5 A. I think they were combined then.

6 Q. Okay.

7 A. If I remember correctly.

8 Q. All right.

9 A. I'm quite sure they were.

10 Q. All right. And you believe that was  
11 starting four or five years ago.

12 A. Yeah. I don't remember exactly.

13 Q. All right. I want to take you up to  
14 current standing -- well, strike that.

15 Let me first ask you, going back five  
16 years, did you ever testify for them in rate cases?

17 A. Yes.

18 Q. Okay. What is your recollection of  
19 prior to April of 2004 how many rate cases you  
20 testified for upon behalf of LG&E/KU?

21 A. I think there was one case before  
22 that, but I'd have to -- if it's important, I could  
23 check.

24 Q. No, it really isn't. Here's what I  
25 need to get an understanding of. Beside rate cases

1 and damage cases, what kind of work have you done for  
2 LG&E and KU?

3 A. Oh, okay. I never did a damage case  
4 for them. I'm just saying in general, that's the  
5 kind of thing I've done in the past. I've only done  
6 rate cases for LG&E and KU.

7 Q. And you believe you did a rate case  
8 sometime within the last five years other than the  
9 case beginning April 28 --

10 A. I know I worked on something at FERC,  
11 and I don't know if I testified for them there or  
12 not.

13 Q. Okay.

14 A. I'd have to look.

15 Q. Do you know whether or not it was a  
16 rate case?

17 A. Oh, yeah. Before FERC, yes, it was --  
18 actually, let me think. Yes, it was, because I know  
19 I did some kind of analysis of rate of return.

20 Q. All right. Do you have a specialty  
21 within the finance area for regulated utilities such  
22 as LG&E/KU?

23 A. Yes. It's in the area of rate of  
24 return and issues of risk, regulatory policy, things  
25 like that.

1           Q.       All right. I'm going to refer as  
2 the -- to the two rate cases that were on the docket  
3 of the Public Service Commission and the Commonwealth  
4 of Kentucky as case No. 2003-00433 and case  
5 No. 2003-00434, which are Louisville Gas & Electric  
6 Company rate case, the first one, and Kentucky  
7 Utilities Company, the second one, item 00434.

8           A.       Okay.

9           Q.       All right. Using that as a reference,  
10 can you tell me when you were first contacted to  
11 participate in the rate cases?

12          A.       I don't recall exactly. It was  
13 probably several months before I filed the testimony,  
14 and so it must have been sometime in 2003.

15          Q.       All right, sir. Let me give you a  
16 little aid and assistance here. The notice of intent  
17 to file was filed the final week of November of 2003.  
18 The actual rate case was filed the last week of  
19 December 2003.

20          A.       Okay. So it was probably several  
21 months before that.

22          Q.       All right. And who contacted you?

23          A.       It might have been Kendrick Riggs or  
24 it might have been John Wolfram. I think one of  
25 those two. I don't recall exactly.

1           Q.       All right, sir. And I take it you had  
2 testimony prepared and filed in the two rate cases?

3           A.       Yes, I did prepare testimony and it  
4 was filed.

5           Q.       All right. And did you testify in  
6 both rate cases?

7           A.       Yes, I did.

8           Q.       All right. So you performed work for  
9 both case No. 0433 and case No. 0434.

10          A.       That's correct.

11          Q.       And you filed testimony in both; am I  
12 correct?

13          A.       Yes.

14          Q.       All right. Did you at any time prior  
15 to the end of the year 2003 have any conversations  
16 with any member of the staff of the Public Service  
17 Commission about the two rate cases?

18          A.       None whatsoever.

19          Q.       Okay. And let me ask you that same  
20 question with regard to any commission member of the  
21 Public Service Commission of the Commonwealth of  
22 Kentucky. Any conversations prior to the end of the  
23 year 2003?

24          A.       No, I did not.

25          Q.       All right, sir. Now, moving into the



1 year 2004, do you know when your testimony was  
2 actually filed of record in the case?

3 A. I thought it was, if I remember right,  
4 right at the end of -- let me just think -- at the  
5 end of 2003. Is that what you said? That's sort of  
6 what I recollect. I know I was cross-examined  
7 sometime in May of 2004.

8 Q. All right. And who were you  
9 cross-examined by?

10 A. It was Ms. Blackford.

11 Q. Okay. From the attorney general's  
12 office?

13 A. Yes.

14 Q. Anybody else?

15 A. No, because by that time there was a  
16 partial settlement on the table, and I think I was --  
17 Ms. Blackford was the only one who cross-examined me.

18 Q. Okay. And that was actually in  
19 Frankfort, Kentucky at the offices of the Public  
20 Service Commission, correct?

21 A. That's correct.

22 Q. Okay. That was on the record in the  
23 two rate cases; am I correct?

24 A. Yes, that's correct.

25 Q. Okay. Now, prior -- and let's go back

1 to the first of the year, January 1st, 2004, until  
2 the time that you actually gave your testimony. Did  
3 you have any contact with any member of the staff of  
4 the Public Service Commission about the rate cases?

5 A. I never spoke to anyone. I don't  
6 recall if the staff sent me any data requests.

7 Q. Okay.

8 A. They might have. And if they did, I  
9 obviously replied.

10 Q. Yes. Now, if, in fact, you had  
11 received a data request, would you have discussed  
12 that with counsel for LG&E/KU prior to responding?

13 A. If -- if I was unclear about something  
14 or if I thought they were asking for something that  
15 was unreasonable, I might have discussed it, but I --

16 Q. Do you have a --

17 A. Other than that, I would have just  
18 replied and sent it to whoever I was working with. I  
19 don't remember if it was John Wolfram or Kendrick  
20 Riggs, but forward it on to whoever it had to be  
21 submitted to.

22 Q. Do you have a present recollection of  
23 having had conversations about data requests?

24 A. No, I don't.

25 Q. All right. Fair enough. So you filed

1 your testimony, and then you came to Frankfort to  
2 testify; am I correct?

3 A. Yes.

4 Q. All right. Now, the first informal  
5 conference would have been April the 28th, 2004. Did  
6 you attend the informal conference?

7 A. No, I did not.

8 Q. Okay. Between April the 28th, 2004  
9 and the following week, did you attend any  
10 conferences, settlement conferences or any other  
11 conferences on this matter?

12 A. When I -- when I came to the hearing  
13 on -- my recollection it was a Tuesday, May 4th.

14 Q. All right, sir.

15 A. Instead of the hearings started, I  
16 think they adjourned to a room behind the hearing  
17 room. And there were quite a few people in there,  
18 and I think they were to be having settlement  
19 negotiations. And I was sitting in the audience for  
20 that. I wasn't sitting around -- they had a big  
21 group of tables. I wasn't sitting around the group  
22 of tables. I was in the audience in that conference  
23 room.

24 Q. All right, sir. And were you there  
25 for the whole of the day?

1           A.       I was there a good part of the day. I  
2 might have stepped out for a while. As I said, I  
3 wasn't participating in the negotiation. I was more  
4 in the audience.

5           Q.       All right, sir. Did you have on that  
6 day any conversations with any member of the staff of  
7 the Public Service Commission?

8           A.       Not -- not about the case. If I did,  
9 it was during a break, just social talk about the  
10 Kentucky Derby or something like that.

11          Q.       Okay. Did you know -- prior to your  
12 appearance on May 4th, 2004, did you know personally  
13 any members of the staff?

14          A.       I -- when you say "know," I believe I  
15 have been cross-examined by Mr. Raff before.

16          Q.       Other than your experience in  
17 cross-examination, had you ever had any other  
18 conversations with him?

19          A.       Again, just social talk at the  
20 hearings, before I testified, after and during the  
21 breaks, something like that. I don't know them  
22 personally.

23          Q.       All right. So when you say "social,"  
24 it would be more in the way of a salutation, hi, how  
25 are you?

1           A.       Right.

2           Q.       Okay.

3           A.       Talking with them about the Derby or  
4 something like that.

5           Q.       All right, sir. Let me ask you the  
6 same question. Do you know any members of the Public  
7 Service Commission?

8           A.       No.

9           Q.       Okay. And I take it on May the 4th,  
10 you had no conversations with any member of the  
11 Public Service Commission.

12          A.       That's correct.

13          Q.       And so that we complete the loop,  
14 between April the 28th, 2004, the date of the  
15 informal conference, and May 4, 2004, do I take it  
16 you had no conversations with any member of the  
17 staff, nor any conversation with any member of the  
18 Public Service Commission?

19          A.       For sure not the Public Service  
20 Commission. The staff, as I said, it might have been  
21 a social comment just in passing if there was a break  
22 because I had seen them in the past before, but  
23 nothing substantive about the case.

24          Q.       Okay. And so that we're clear, you  
25 would not have been there physically to have such a

1 conversation anytime prior to May the 4th; am I  
2 correct?

3 A. I -- I arrived in Louisville on  
4 Sunday, May 2nd, but I was in Louisville. And I  
5 just -- if I recollect, I came to Frankfort  
6 Tuesday --

7 Q. All right, sir.

8 A. -- May 4th.

9 Q. All right. The next day, May the 5th,  
10 which would have been a Wednesday, did you  
11 participate in the proceeding?

12 A. I was cross-examined, if I remember  
13 correctly.

14 Q. Okay. And that's the  
15 cross-examination you told me about with  
16 Ms. Blackford.

17 A. Yes, that's correct.

18 Q. Okay. Other than your  
19 cross-examination on May the 5th, did you participate  
20 in any of the settlement discussions in similar  
21 fashion as you had the day before?

22 A. I don't remember if there were any  
23 that day. If there were, it was the same kind of  
24 thing where I was just sort of in the audience. I  
25 was mostly sitting there. And I thought I might have

1 to be cross-examined at any moment, so I was studying  
2 my backup materials, things like that. I was more  
3 concerned about my testimony than the settlement  
4 discussions.

5 Q. All right, sir. Do I take it, then,  
6 you really did not know the chronology of events with  
7 the settlement discussions and what the exact issues  
8 were?

9 A. That's true.

10 Q. All right. You were more focused on  
11 your testimony?

12 A. Yes.

13 Q. Fair enough. And thus, I take it, you  
14 did not know the content of the actual discussions  
15 that had been going on prior to May the 5th?

16 A. Well, I was there May 4th, but I was,  
17 you know, listening at times, but not paying full  
18 attention every second because some of it was just  
19 droning on. It was not my area and, you know, it  
20 wasn't scintillating, shall we say.

21 Q. Were you informed at any time on  
22 either May the 4th or May the 5th that a settlement  
23 agreement had been reached?

24 A. I recollect that it was either close  
25 to or something had been reached. I don't remember

1 exactly, but it was either very close or it had been  
2 reached and they were just branching out the  
3 language. I can't tell exactly which, whether it was  
4 close to or reached and just working out language. I  
5 don't recall specifically.

6 Q. Okay. After you gave your testimony  
7 on May the 5th, did you depart immediately or did you  
8 continue to stay in Louisville?

9 A. No. I stayed around. I believe that  
10 I helped cross-examine the attorney general's  
11 witness, Dr. Weaver.

12 Q. All right. And when do you believe  
13 that occurred?

14 A. It might have been the next day. I  
15 don't -- I don't remember whether it was Wednesday or  
16 Thursday. I recollect coming home on a Friday, but I  
17 think he might have been cross-examined Thursday.  
18 I'm not sure.

19 Q. All right. So you believe that you  
20 may have been there on May the 6th to participate in  
21 his cross-examination?

22 A. Yes, I -- I think so.

23 Q. Okay. And either on May 4th, 5th or  
24 6th, do I take it you really do not know what the  
25 terms and conditions of the settlement agreement --



1 conversations were, do you?

2 A. No, other than what I heard when I  
3 was, as I said, in that conference room behind the  
4 hearing room.

5 Q. All right. Let me ask you the same  
6 questions I've asked you with regard to May the 4th  
7 or May the 5th and the 6th. Did you have any  
8 conversations, other than social or salutations,  
9 between you and the staff on either May 5th or  
10 May 6th?

11 A. Not that I recall, unless -- I don't  
12 remember if the staff cross-examined me at all.

13 Q. Other than on the record.

14 A. No. Again, it was just the social  
15 salutations.

16 Q. Okay. And let me ask you that same  
17 question with regard to, again, commission members,  
18 no conversations with them.

19 A. No.

20 Q. All right. Now, Friday would have  
21 been May the 7th. And I take it from your prior  
22 statement, you left Frankfort and Louisville on  
23 Friday, the 7th, to return to New York.

24 A. That's what I recall, yes.

25 Q. Okay. In the following week, did you

1 come to Frankfort or Louisville to participate in  
2 these proceedings?

3 A. No.

4 Q. All right. Do you have a recollection  
5 of having been advised as to the determination by the  
6 Public Service Commission on this case?

7 A. Could you repeat that again?

8 Q. Sure. Do you have a recollection of  
9 having been advised ultimately -- let me help you  
10 with the chronology -- in late June of 2004?

11 A. Oh, yes. There were decisions in each  
12 of the cases, so I saw those decisions.

13 Q. Okay. And you did see the decisions.

14 A. Yes.

15 Q. Okay. And did you have any  
16 communication from the time you left on May the 7th,  
17 that Friday, until determination by the Public  
18 Service Commission with any member of the staff or  
19 commission about the rate cases?

20 A. None whatsoever.

21 Q. All right, sir. Now, having sat there  
22 for, I guess, some two and a half days, May 4th,  
23 May 5th and part of May 6th, did you yourself witness  
24 anything which you would personally call  
25 inappropriate or collusive behavior upon the part of

1 the staff or the commission?

2 A. No.

3 MR. GOLDBERG: All right, sir. That's  
4 all I have, Mr. Rosenberg. I appreciate very much  
5 your taking this time with us.

6

7 (STATEMENT CONCLUDED AT 10:25 A.M.)

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1 STATE OF KENTUCKY        )(  
                                  )( SS:  
2 COUNTY OF JEFFERSON    )(  
3

4                   I, ELLEN L. COULTER, Notary Public,  
5 State of Kentucky at Large, hereby certify that the  
6 foregoing sworn statement was taken at the time and  
7 place stated in the caption; that the appearances  
8 were as set forth in the caption; that prior to  
9 giving testimony the witness was first duly sworn by  
me; that said testimony was taken down by me in  
stenographic notes and thereafter reduced under my  
supervision to the foregoing typewritten pages and  
that said typewritten transcript is a true, accurate  
and complete record of my stenographic notes so  
taken.

10                   I further certify that I am not  
11 related by blood or marriage to any of the parties  
hereto and that I have no interest in the outcome of  
captioned case.


12                   My commission as Notary Public expires  
November 5, 2007.

13                   Given under my hand this the 7<sup>th</sup>  
14 day of September, 2005, at Louisville,  
15 Kentucky.

16  
17 

18 ELLEN L. COULTER  
19 NOTARY PUBLIC  
20  
21  
22  
23  
24  
25

1 I, the undersigned, ROBERT G. ROSENBERG,  
2 do hereby certify that I have read the foregoing  
3 sworn statement, and that, to the best of my  
4 knowledge, said sworn statement is true and  
5 accurate, with the exception of the corrections, if  
6 any, listed on the errata sheet.

7  
8   
9 ROBERT G. ROSENBERG

10  
11 Subscribed and sworn to before me this 24  
12 day of September, 2005.

13  
14  
15   
16 NOTARY PUBLIC

17  
18 My commission expires Jan. 31, 20 02

19 My commission expires \_\_\_\_\_  
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25

COULTER REPORTING, LLC  
101 EAST KENTUCKY STREET, SUITE 200  
LOUISVILLE, KY 40203

ERRATA SHEET

NAME Robert G. Rosenberg DATE OF DEPOSITION August 29, 2005

After having read my deposition, I wish to make the following changes: None

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